

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

(Attorney Docket No. 15046US01)

***In the Application of:***

**Jeyhan Karaoguz et al.**

***Serial No.:* 10/675,652**

***Filed:* September 30, 2003**

***For:* SECURE MEDIA PERIPHERAL  
ASSOCIATION IN A MEDIA  
EXCHANGE NETWORK**

***Examiner:* Piotr Poltorak**

***Group Art Unit:* 2434**

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**Transmitted via the Office electronic  
filing system June 18, 2010.**

**REQUEST FOR RECONSIDERATION OF  
USPTO RECALCULATION OF  
PATENT TERM ADJUSTMENT IN VIEW OF *WYETH***

Commissioner for Patents  
P.O. Box 1450  
Alexandria VA 22313-1450

Sir:

The applicant respectfully requests reconsideration of the patent term adjustment indicated in the enclosed print-out of the current United States Patent and Trademark Office (USPTO) patent term adjustment determination from PAIR and the *Decision On Request For Recalculation Of Patent Term Adjustment In View Of Wyeth And Notice Of Intent To Issue Certificate Of Correction* (PTOL-549G (04/10)) ("the Decision") mailed May 18, 2010, respecting the present application. This application for patent term adjustment is being filed within the later of one month or 30 days after the mailing date of the Decision.

This request is accompanied by the fee set forth in § 1.18(e) (\$200.00).

This request includes below a statement of the facts involved in sufficient detail to allow the United States Patent and Trademark Office (USPTO) to verify the correct patent term adjustment.

The Applicant's calculated patent term adjustment is 1250 days. The Decision reported a patent term adjustment of 1248 days. Thus, the Applicant is requesting an increase in the patent term adjustment.

The basis under 37 CFR § 1.702 for the adjustment is as follows:

### **Positive Patent Term Adjustment**

#### **Three Year Guarantee**

##### **(35 USC § 154(b)(1)(B))**

The USPTO calculation of the patent term adjustment under the three-year deadline for issuing a patent after its filing date was 589 days. The Applicant disagrees with this determination because the patent term adjustment on this ground should instead be 590 days, minus 0 days consumed by an appeal, for a net adjustment of 590 days.

Specifically, the enclosed modified version of the USPTO Patent Term Adjustment calculation on PAIR shows that:

- the actual filing date of the application was September 30, 2003,
- the third anniversary of the actual filing date was September 30, 2006,
- the first request for continued examination of the application under 35 USC 132(b) was filed on May 12, 2008.

### **Reductions in Patent Term Adjustment**

#### **Alleged Submission of a Delaying Paper After Allowance**

##### **37 CFR § 1.704(c)(10)**

The applicant is contesting the following application of 37 CFR § 1.704(c)(10) to reduce the patent term adjustment in the present application due to a paper filed after the Notice of Allowance has been mailed.

The USPTO is believed to be characterizing the paper filed by the Applicant entitled, Amendment After Notice of Allowance (Rule 312), on July 6,

2009, after the April 6, 2009, mailing date of the Notice of Allowance, as a paper delaying prosecution. The USPTO is believed to be characterizing the paper mailed by the USPTO on July 15, 2009, as a response to the alleged paper delaying prosecution. The reduction of PTA asserted by the USPTO is 10 days.

The Applicant's position is that this determination is incorrect for the following reason(s):

- The correct amount of reduction is submitted by the Applicant to be 9 days, which is the difference between the correct filing and mailing dates stated above, but not exceeding four months.

### **Net Patent Term Adjustment**

The changes requested by the Applicant to the USPTO patent term adjustment determination in the DECISION ON REQUEST FOR RECALCULATION OF PATENT TERM ADJUSTMENT IN VIEW OF WYETH AND NOTICE OF INTENT TO ISSUE CERTIFICATE OF CORRECTION (PTOL-549-16G (05/10)) ("the Decision") mailed May 18, 2010, are as follows:

### **Positive Patent Term Adjustment**

#### **Three Year Guarantee (35 USC § 154(b)(1)(B))**

	<b>Patent Term Adjustment (days)</b>
<b>USPTO Calculation in Recalculation Request</b>	589
<b>Applicant Calculation</b>	590

### **Reductions in Patent Term Adjustment**

- **Alleged Submission of a Delaying Paper After Allowance**

**37 CFR § 1.704(c)(10)**

	<b>Patent Term Adjustment (days)</b>
<b>USPTO Calculation in Recalculation Request</b>	10
<b>Applicant Calculation</b>	9

### **Conclusion**

The Applicant requests modification of the patent term adjustment as indicated above. As shown in the enclosed modified version of the USPTO Patent Term Adjustment calculation on PAIR, the net patent term adjustment proposed by the Applicant is thus 1250 days.

Please charge any fees or credit any overpayment of fees presently required to McAndrews, Held & Malloy, Ltd., Deposit Account No. 13-0017.

Respectfully submitted,

McANDREWS, HELD & MALLOY, LTD.

Dated: June 18, 2010

By: /Hopeton S. Walker/  
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# UNITED STATES PATENT AND TRADEMARK OFFICE

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MCANDREWS HELD & MALLOY, LTD  
500 WEST MADISON STREET  
SUITE 3400  
CHICAGO, IL 60661

Mail Date: 05/18/2010

<b>Applicant</b>	: Jeyhan Karaoguz	: NOTICE CONCERNING IMPROPER
<b>Patent Number</b>	: 7584359	: CALCULATION OF PATENT TERM
<b>Issue Date</b>	: 09/01/2009	: ADJUSTMENT BASED UPON USPTO
<b>Application No</b>	: 10/675,652	: IMPROPERLY MEASURING REDUCTION
<b>Filed</b>	: 09/30/2003	: PERIOD UNDER 37 CFR 1.704(c)(10).

The United States Patent and Trademark Office (USPTO) discovered that in processing the recent recalculation decisions mailed in response to patentee's filed Request for Recalculation of Patent Term Adjustment in view of Wyeth, the USPTO improperly measured the reduction period for reductions under 37 CFR 1.704(c)(10). Pursuant to 37 CFR 1.704(c)(10), patentee's reduction begins on the date of filing the amendment under 37 CFR 1.312 ("1.312 amendment") or other related paper and ends on the date that the Office mails a response to the filing of the 1.312 amendment or other paper. It has been discovered that during the recalculation, the calculation failed to the limit the reduction to the mail date of the response to the 1.312 amendment or other paper. Accordingly, patentee's reductions were greater than warranted.

This notice **VACATES** the previous GRANTED request for recalculation and provides patentee with a revised GRANTED recalculation.

The patent term adjustment has been determined to be **1248** days. The USPTO will *sua sponte* issue a certificate of correction reflecting the amount of patent term adjustment (PTA) days determined by the recalculation.

Prior to the issuance of the certificate of correction, the USPTO will afford patentee an opportunity to be heard and request reconsideration. Accordingly, patentee has **one month or thirty (30) days** from the mail date of this notice, whichever is longer, to file a request for reconsideration of this PTA calculation. See 35 U.S.C. § 154(b)(3)(B)(ii) and 37 CFR 1.322(a)(4).

Patentee should use document code PET.OP if electronically filing a request for reconsideration of this PTA calculation. The patentee must also include the information required by 37 CFR 1.705(b)(2), and the fee required by 37 CFR 1.18(e). If patentee does not file a timely request for reconsideration of this PTA calculation, including the information required by 37 CFR 1.705(b)(2) and the fee required by 37 CFR 1.18(e), the USPTO will issue a certificate of correction reflecting the PTA determination noted above.

Patentee should be aware that in order to preserve the right of review of the USPTO's PTA determination in the United States District Court for the District of Columbia, patentee must ensure that the steps required under 35 U.S.C. § 154 (b)(4) are taken in a timely manner. Nothing in the request for recalculation should be construed as providing an alternative time frame for commencing a civil action under 35 U.S.C. § 154(b)(4).

10/675,652	SECURE MEDIA PERIPHERAL ASSOCIATION IN A MEDIA EXCHANGE NETWORK	06-17-2010::16:10:22
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### Patent Term Adjustments

Patent Term Adjustment (PTA) for Application Number: 10/675,652

Filing or 371(c) Date:	09-30-2003	USPTO Delay (PTO) Delay (days):	-
Issue Date of Patent:	09-01-2009	Three Years:	-
Pre-Issue Petitions (days):	-	Applicant Delay (APPL) Delay (days):	-
Post-Issue Petitions (days):	-	Total PTA (days):	1248
USPTO Adjustment(days):	-	Explanation Of Calculations	

### Patent Term Adjustment History

Date	Contents Description	PTO(Days)	APPL(Days)
05-13-2010	Petition Decision - Granted		
03-01-2010	Petition Entered		
04-21-2010	Mail-Petition Decision - Granted		
04-17-2010	Petition Decision - Granted		
03-01-2010	Petition Entered		
09-01-2009	Recordation of Patent Grant Mailed		
08-12-2009	Issue Notification Mailed		
05-11-2008	PTA 36 Months	589	
09-01-2009	Patent Issue Date Used in PTA Calculation		
07-16-2009	Dispatch to FDC	⬆	
07-15-2009	Mail Response to 312 Amendment (PTO-271)	⬆	
07-15-2009	Response to Amendment under Rule 312	⬆	
07-06-2009	Amendment after Notice of Allowance (Rule 312)		10
07-08-2009	Application Is Considered Ready for Issue		
07-06-2009	Issue Fee Payment Verified		
07-06-2009	Issue Fee Payment Received		
04-06-2009	Mail Notice of Allowance		
04-06-2009	Document Verification		
04-06-2009	Notice of Allowance Data Verification Completed		
03-25-2009	Date Forwarded to Examiner		
03-23-2009	Amendment after Final Rejection		
02-02-2009	Mail Final Rejection (PTOL - 326)		
01-31-2009	Final Rejection		
11-20-2008	Date Forwarded to Examiner		
10-30-2008	Response after Non-Final Action		
10-06-2008	Case Docketed to Examiner in GAU		
08-05-2008	Mail Non-Final Rejection		
08-04-2008	Non-Final Rejection		
05-16-2008	Date Forwarded to Examiner		
05-16-2008	Date Forwarded to Examiner		
05-12-2008	Request for Continued Examination (RCE)		

05-16-2008	Disposal for a RCE / CPA / R129	
05-12-2008	Workflow - Request for RCE - Begin	
02-13-2008	Mail Final Rejection (PTOL - 326)	
02-12-2008	Final Rejection	
12-03-2007	New or Additional Drawing Filed	
12-13-2007	Date Forwarded to Examiner	
12-03-2007	Response after Non-Final Action	
09-04-2007	Mail Non-Final Rejection	
08-31-2007	Non-Final Rejection	
06-24-2007	Date Forwarded to Examiner	
06-19-2007	Response after Non-Final Action	
04-04-2007	Mail Non-Final Rejection	669
04-02-2007	Non-Final Rejection	⬆
03-16-2007	Case Docketed to Examiner in GAU	⬆
12-11-2006	Case Docketed to Examiner in GAU	⬆
12-05-2006	Case Docketed to Examiner in GAU	⬆
08-25-2006	Case Docketed to Examiner in GAU	⬆
08-24-2006	Case Docketed to Examiner in GAU	⬆
08-25-2005	Case Docketed to Examiner in GAU	⬆
08-24-2005	Case Docketed to Examiner in GAU	⬆
06-28-2005	Case Docketed to Examiner in GAU	⬆
06-14-2005	Case Docketed to Examiner in GAU	⬆
01-25-2005	Case Docketed to Examiner in GAU	⬆
08-19-2004	Case Docketed to Examiner in GAU	⬆
07-15-2004	IFW TSS Processing by Tech Center Complete	⬆
07-15-2004	Case Docketed to Examiner in GAU	⬆
12-24-2003	Application Return from OIPE	⬆
12-24-2003	Application Return TO OIPE	⬆
12-24-2003	Application Dispatched from OIPE	⬆
12-24-2003	Application Is Now Complete	⬆
12-12-2003	Cleared by OIPE CSR	⬆
12-05-2003	IFW Scan & PACR Auto Security Review	⬆
09-30-2003	Initial Exam Team nn	⬆

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PATENT TERM ADJUSTMENT SPREADSHEET

Ser. No. 10/675,652 Docket No. 15046US01

DATE	EVENT	PTO Calculation		Applicant Calculation	
		PTO Delay	Appl. Delay	PTO Delay	Appl. Delay
5/13/2010	Petition Decision - Granted				
4/21/2010	Mail-Petition Decision - Granted				
4/17/2010	Petition Decision - Granted				
3/1/2010	Petition Entered				
3/1/2010	Petition Entered				
9/1/2009	Recordation of Patent Grant Mailed				
9/1/2009	Patent Issue Date Used in PTA Calculation				
8/12/2009	Issue Notification Mailed				
7/16/2009	Dispatch to FDC				
7/15/2009	Mail Response to 312 Amendment (PTO-271)				9.00
7/15/2009	Response to Amendment under Rule 312				
7/8/2009	Application Is Considered Ready for Issue				
7/6/2009	Amendment after Notice of Allowance (Rule 312)		10		
7/6/2009	Issue Fee Payment Verified				
7/6/2009	Issue Fee Payment Received				
4/6/2009	Mail Notice of Allowance				
4/6/2009	Document Verification				
4/6/2009	Notice of Allowance Data Verification Completed				







	Case Docketed to Examiner in GAU	✓			
8/19/2004					
	IFW TSS Processing by Tech Center Complete	✓			
7/15/2004					
	Case Docketed to Examiner in GAU	✓			
7/15/2004					
	Application Return from OIPE	✓			
12/24/2003					
	Application Return TO OIPE	✓			
12/24/2003					
	Application Dispatched from OIPE	✓			
12/24/2003					
	Application Is Now Complete	✓			
12/12/2003					
	Cleared by OIPE CSR	✓			
12/5/2003					
	IFW Scan & PACR Auto Security Review	✓			
9/30/2003					
	Initial Exam Team nn	✓			
			<b>PTO (Days)</b>	<b>APPL (Days)</b>	<b>1258</b>
					<b>1248 Days</b>

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<b>PTO (Days)</b>		<b>APPL (Days)</b>
1259		9
<b>1250 Days</b>		